

CHAPTER 14
PUBLIC INFORMATION AND INSPECTION OF RECORDS

The Iowa board of pharmacy examiners hereby adopts, with the following exceptions and amendments, rules of the Governor's Task Force on Uniform Rules of Agency Procedure relating to public records and fair information practices which are printed in the first volume of the Iowa Administrative Code.

657—14.1(155A,124,22) Definitions. As used in this chapter:

"Agency." In lieu of the words "(official or body issuing these rules)", insert "Iowa Board of Pharmacy Examiners."

657—14.3(155A,124,22) Requests for access to records.

14.3(1) Location of record. In lieu of the words "(insert agency name and address)", insert "Iowa Board of Pharmacy Examiners, 400 S.W. Eighth Street, Suite E, Des Moines, Iowa 50309-4688".

14.3(2) Office hours. In lieu of the words "(insert customary office hours and, if agency does not have customary office hours of at least thirty hours per week, insert hours specified in Iowa Code section 22.4)", insert "8:00 a.m. to 4:30 p.m. daily excluding Saturdays, Sundays, and legal holidays".

14.3(7) Fees.

c. *Supervisory fee.* In lieu of the words "(specify time period)", insert "fifteen minutes".

657—14.6(155A,124,22) Procedure by which additions, dissents, or objections may be entered into certain records. In lieu of the words "(designate office)", insert "the executive secretary/director".

657—14.9(155A,124,22) Disclosures without the consent of the subject.

14.9(1) Open records are routinely disclosed without the consent of the subject.

14.9(2) To the extent allowed by law, disclosure of confidential records may occur without the consent of the subject. Following are instances where disclosure, if lawful, will generally occur without notice to the subject:

a. For a routine use as defined in rule 14.10(155A,124,22) or in the notice for a particular record system.

b. To a recipient who has provided the board with advance written assurance that the record will be used solely as a statistical research or reporting record, provided that the record is transferred in a form that does not identify the subject.

c. To another government agency or to an instrumentality of any governmental jurisdiction within or under the control of the United States for a civil or criminal law enforcement activity if the activity is authorized by law, and if an authorized representative of the government agency or instrumentality has submitted a written request to the board specifying the record desired and the law enforcement activity for which the record is sought.

d. To an individual pursuant to a showing of compelling circumstances affecting the health or safety of any individual if a notice of the disclosure is transmitted to the last-known address of the subject.

e. To the legislative fiscal bureau under Iowa Code section 2.52.

f. Disclosures in the course of employee disciplinary proceedings.

g. In response to a court order or subpoena.

657—14.10(155A,124,22) Routine use. “Routine use” means the disclosure of a record without the consent of the subject or subjects, for a purpose which is compatible with the purpose for which the record was collected. It includes disclosures required to be made by statute other than the public records law, Iowa Code chapter 22.

To the extent allowed by law, the following uses are considered routine uses of all board records:

a. Disclosure to those officers, employees, investigators, members, and agents of the board who have a need for the record in the performance of their duties. The custodian of the record may, upon request of any officer, employee, investigator, or member, or on the custodian’s own initiative, determine what constitutes legitimate need to use confidential records.

b. Disclosure of information indicating an apparent violation of the law to appropriate law enforcement authorities for investigation and possible criminal prosecution, civil court action, or regulatory order.

c. Disclosure to the attorney general’s office for use in performing its official function.

d. Transfers of information within the board office and among board members; to other state agencies, boards, and departments; to federal agencies; to agencies in other states; to the National Association of Boards of Pharmacy; or to local units of government as appropriate to carry out the board’s statutory authority.

e. Information released to the staff of federal or state entities for audit purposes or for purposes of determining whether the board is operating a program lawfully.

f. Any disclosure specifically authorized by the statute under which the record was collected or maintained.

657—14.11(155A,124,22) Consensual disclosure of confidential records.

14.11(1) *Consent to disclosure by a subject individual.* To the extent permitted by law, the subject may consent in writing to board disclosure of confidential records as provided in rule 14.7(155A,124,22).

14.11(2) *Complaints to public officials.* A letter from a subject of a confidential record to a public official which seeks the official’s intervention on behalf of the subject in a matter that involves the board may, to the extent permitted by law, be treated as an authorization to release sufficient information about the subject to the official to resolve the matter.

14.11(3) *Obtaining information from a third party.* The board is required to obtain information to verify and investigate complaints concerning licensees and registrants. Requests to third parties for this information may involve the release of confidential records requiring special procedures.

a. Where necessary, the board shall obtain from the subject individual an authorization for the release of specially protected information on a form that meets the requirements of the law.

b. To obtain alcohol and drug abuse patient information, the board shall obtain special authorization from the subject individual on a “Consent to Release Alcohol and Drug Abuse Patient Information” form or other appropriate form.

657—14.12(155A,124,22) Release to subject.

14.12(1) The subject of a confidential record may file a written request to review confidential records about that person as provided in rule 14.6(155A,124,22). However, the board need not release the following records to the subject:

a. The identity of a person providing information to the board need not be disclosed directly or indirectly to the subject of the information when the information is authorized to be held confidential pursuant to Iowa Code section 22.7(18) or other provision of law.

b. Records need not be disclosed to the subject when they are the work product of an attorney or are otherwise privileged.

c. Peace officers' investigative reports may be withheld from the subject, except as required by the Iowa Code. See Iowa Code section 22.7(5).

d. As otherwise authorized by law.

14.12(2) Where a record has multiple subjects with interest in the confidentiality of the record, the board may take reasonable steps to protect confidential information relating to another subject.

657—14.13(155A,124,22) Availability of records.

14.13(1) *Open records.* Board records are open for public inspection and copying unless otherwise provided by rule or law.

14.13(2) *Confidential records.* The following records may be withheld from public inspection. Records are listed by category, according to the legal basis for withholding them from public inspection.

a. Tax records made available to the board (Iowa Code sections 422.20 and 422.72);

b. Prior to initiation of a contested case, all complaint files, investigation files, other investigation reports, and other investigative information in the possession of the board or its employees or agents which relates to licensee discipline (Iowa Code section 272C.6(4));

c. Records of controlled substances disposed of or destroyed (Iowa Code section 124.506);

d. Criminal history or prior misconduct of an applicant for licensure (Iowa Code section 147.21(1));

e. Information relating to the contents of an examination for licensure (Iowa Code section 147.21(2));

f. Information relating to the results of an examination for licensure other than final score except for information about the results of an examination which is given to the person who took the examination (Iowa Code section 147.21(3));

g. Information contained in professional service abuse reports or other investigative reports relating to the abuse of controlled substances (Iowa Code section 124.504);

h. Minutes of closed meetings of the board (Iowa Code section 21.5(4));

i. Records of closed session board disciplinary hearings (Iowa Code sections 272C.6(1) and 21.5(4));

j. Information or records received from a restricted source and any other information or records made confidential by law;

k. Identifying details in final orders, decisions, and opinions to the extent required to prevent a clearly unwarranted invasion of personal privacy or trade secrets under Iowa Code section 17A.3(1)“d”;

l. Those portions of the board's staff manuals, instructions, or other statements issued which set forth criteria or guidelines to be used by the board staff in conducting audits, in making inspections, in negotiating settlements, or in the selection or handling of cases, such as operational tactics or allowable tolerances or criteria for the defense, prosecution, or settlement of cases, when disclosure of these statements would:

(1) Enable law violators to avoid detection;

(2) Facilitate disregard of requirements imposed by law; or

(3) Give a clearly improper advantage to persons who are in an adverse position to the board. See Iowa Code sections 17A.2 and 17A.3.

m. Information contained in reports of theft or loss of controlled substances;

n. Any other records made confidential by law.

14.13(3) Authority to release confidential records. The agency may have discretion to disclose some confidential records which are exempt from disclosure under Iowa Code section 22.7 or other law. Any person may request permission to inspect records withheld from inspection under a statute which authorizes limited or discretionary disclosure as provided in rule 14.4(155A,124,22). If the agency initially determines that it will release such records, the agency may, where appropriate, notify interested parties and withhold the records from inspection as provided in subrule 14.4(3).

657—14.14(22,124,155A) Personally identifiable information. This rule describes the nature and extent of personally identifiable information which is collected, maintained, and retrieved by the board by personal identifier in record systems as defined in rule 14.1(22,124,155A). For each record system, this rule describes the legal authority for the collection of that information and the means of storage of that information. Indication that information in a record system is stored in or on more than one media format should not be interpreted to mean that all information is stored in all such formats. Some information comprising these records may be maintained on one type of media while other related information is maintained in another format. The description also indicates whether the record system contains any confidential information, and includes the legal authority for confidentiality. The record systems maintained by the board are:

14.14(1) Records of board disciplinary hearings. These records contain information about licensees and controlled substance registrants who are the subject of a board disciplinary proceeding or other action. This information is collected by the board pursuant to the authority granted in Iowa Code chapters 155A, 272C, and 124 and is stored electronically, in computer, and on paper. The information contained in “closed session” board hearings records is confidential in whole or in part pursuant to Iowa Code sections 21.5(4) and 272C.6(1).

14.14(2) Complaint reports. These records contain information about licensees, registrants, and the persons they serve. This information is collected by the board pursuant to the authority granted in Iowa Code chapters 155A and 124 and is stored electronically, in computer, and on paper. The information contained in these records is confidential in whole or in part pursuant to Iowa Code sections 22.7(18) and 272C.6(4).

14.14(3) Continuing pharmaceutical education records. These records contain educational information about pharmacists licensed by the board. This information is collected pursuant to the authority granted in Iowa Code chapter 155A and is stored on paper only.

14.14(4) Controlled drug samples records. These records contain information about controlled substance registrants who receive samples of controlled drugs from drug manufacturers. The records include the name, strength, and quantity of controlled drugs received by the registrant, and the identity of the manufacturer. This information is collected by the board pursuant to the authority granted in Iowa Code chapter 124 and is stored in computer and on paper.

14.14(5) Controlled substance registration records. These records contain information about pharmacies; individual practitioners including doctors of medicine, osteopathy, dentistry, veterinary medicine, podiatry, and optometry; physician assistants; advanced registered nurse practitioners; manufacturers and distributors; importers and exporters; researchers; hospitals and clinics; other health care facilities, such as long-term care facilities and nursing care facilities; analytical laboratories; and teaching institutions. This information is collected by the board pursuant to the authority granted in Iowa Code chapter 124 and is stored on paper and in computer.

14.14(6) Controlled drug destruction reports. These records contain information about the disposal or destruction of controlled substances in the possession of registrants. The records include the name, strength, quantity, and form of all controlled substances disposed of or destroyed, and the identity of the registrant. This information is collected by the board pursuant to the authority granted in Iowa Code chapter 124 and is stored in computer and on paper. The information contained in these records is confidential in whole pursuant to Iowa Code section 124.506.

14.14(7) Examination records. These records contain information about applicants for any of the following examinations: National Association of Boards of Pharmacy Licensure Examination, North American Pharmacist Licensure Examination, Multi-State Pharmacy Jurisprudence Examination, Federal Drug Law Examination, and Iowa Drug Law Examination. These records may also contain information about applicants who pursue licensure by reciprocity, score transfer, or other means. This information is collected by the board pursuant to the authority granted in Iowa Code chapters 147 and 155A and is stored on paper and in computer. The information contained in these records is confidential in part pursuant to Iowa Code sections 147.21(2), 147.21(3), 22.7(1), and 22.7(19).

14.14(8) Pharmacy internship records. These records contain information about pharmacy interns and their preceptors. This information is collected by the board pursuant to the authority granted in Iowa Code section 155A.6 and is stored on paper only. The information contained in these records may be confidential in part pursuant to Iowa Code section 22.7(1).

14.14(9) Investigative reports. These records contain information about the subjects of board investigations and the activities of board investigators. The records include a variety of attachments such as interviews; drug audits; medical records; pharmacy records; exhibits; police reports; and investigators' comments, conclusions, and recommendations. This information is collected by the board pursuant to the authority granted in Iowa Code chapters 147, 155A, 126, and 124 and is stored electronically, in computer, and on paper. The information contained in these records is confidential in whole or in part pursuant to Iowa Code sections 22.7(2), 22.7(5), 22.7(6), 22.7(9), 22.7(19), 124.504, 147.21(1), and 272C.6(4).

14.14(10) Licensure records. These records contain information about pharmacists, pharmacies, and wholesalers who are licensed by the board. This information is collected by the board pursuant to the authority granted in Iowa Code chapters 126 and 155A and is stored on paper, in computer, and in the state archives.

14.14(11) Personnel records. These records contain personal information about board members and staff. This information is stored on paper and microfiche. The personal information contained in these records may be confidential in whole or in part pursuant to Iowa Code section 22.7(11).

14.14(12) Professional service abuse reports. These reports contain information pertaining to known or alleged drug-dependent persons and other controlled substance law offenders within the state. This information is collected by the board pursuant to the authority granted in Iowa Code section 124.504(1) "c" and is stored on paper and in computer. The information contained in these reports is confidential in whole or in part pursuant to Iowa Code section 124.504.

14.14(13) Routine inspection reports. These records contain information about pharmacies, controlled substance registrant offices, manufacturers and distributors, and wholesalers who are inspected by agents of the board to determine compliance with state and federal law. This information is collected by the board pursuant to the authority granted in Iowa Code chapters 155A and 124 and is stored on paper, in computer, and electronically.

14.14(14) Notifications to the board. These records contain reports of theft or loss of controlled substances; reports of pharmacy openings, closings, change of ownership, change of location, or change of pharmacist in charge; reports of the sale or transfer of prescription drugs; reports of out-of-state purchases of controlled substances; reports of disasters, accidents, or emergencies affecting drugs; and reports of pharmacists', pharmacist-interns', and pharmacy technicians' change of name, address or place of employment. This information is collected by the board pursuant to the authority granted in Iowa Code section 155A.19 and is stored on paper and in computer. The information contained in reports of theft or loss of controlled substances may be confidential in whole or in part pursuant to subrule 14.4(5).

14.14(15) Precursor substances permit and distribution records. These records contain information about precursor substance handlers, both vendors and recipients, and information about the distribution, disposal, or destruction of precursor substances. This information is collected by the board pursuant to the authority granted in Iowa Code chapter 124B and is stored in computer and on paper.

14.14(16) Pharmacy technician registration records. These records contain information about pharmacy technicians who are registered by the board. This information is collected by the board pursuant to the authority granted in Iowa Code chapter 155A and is stored on paper, in computer, and in the state archives.

657—14.15(155A,124,22) Other groups of records. This rule describes groups of records maintained by the board other than record systems as defined in rule 14.1(155A,124,22). These records are routinely available to the public. The board's files of these records do not contain confidential information, except where indicated. These records may contain information about individuals and include:

14.15(1) Board calendars, agenda, news releases, statistical reports and compilations, newsletters, publications, correspondence, and other information intended for the public. These records may contain information about individuals, including board members and staff, and are stored on paper and in computer.

14.15(2) Minutes of open meetings of the board. These records contain information about people who participate in board meetings. This information is collected pursuant to Iowa Code section 21.3 and is stored electronically, in computer, and on paper.

14.15(3) Records of board rule-making proceedings. These records may contain information about individuals making written or oral comments on rules proposed by the board. This information is collected pursuant to Iowa Code section 17A.4 and is stored electronically, in computer, and on paper.

14.15(4) Licensing and registration records, including the name, location, date of original licensure or registration, certificate number, and the status of licensure or registration of a licensee or registrant. This information is open to the public and is collected pursuant to Iowa Code section 147.8 and other authority granted in Iowa Code chapters 155A, 124, and 124B and is stored on paper, in computer, and in the state archives. Records which identify particular persons served by the licensee or registrant, such as incident reports or complaint investigations, may be confidential in whole or in part, and therefore are not routinely available to the public.

14.15(5) Board decisions, findings of fact, final orders, advisory opinions, and other statements of law or policy issued by the board in the performance of its function. These records are open to the public pursuant to Iowa Code section 272C.6(4), except for information that is confidential, and are stored on paper and in computer.

657—14.16(22,124,155A) Computer. The board currently uses an NCR Tower 32/650 minicomputer system running Unify/Accell Integrated Database system on a UNIX operating system. The board also uses an in-house network of personal computers hosted to an NCR S46 Super Server platform operating in a Microsoft Windows NT Server environment and running Microsoft SQL Server database system. Staff also use personal computers and laptop computers running various software applications on MS-DOS operating systems in Microsoft Windows environment. These systems permit the comparison of personally identifiable information in one record system with personally identifiable information in another record system.

657—14.17(155A,124,22) Purpose and scope. This chapter implements Iowa Code section 22.11 by establishing board policies and procedures for the maintenance of records.

This chapter does not:

1. Require the board to index or retrieve records which contain information about individuals by that person's name or other personal identifier.
2. Make available to the general public records which would otherwise not be available under the public records law, Iowa Code chapter 22.
3. Govern the maintenance or disclosure of, notification of or access to, records in the possession of the board which are governed by regulations of another board or agency.
4. Apply to grantees, including local governments or subdivisions, administering state-funded programs, unless otherwise provided by law or agreement.
5. Make available records compiled by the board in reasonable anticipation of court litigation or formal administrative proceedings. The availability of the records to the general public or to any subject individual or party to litigation or proceedings shall be governed by applicable legal and constitutional principles, statutes, rules of discovery, evidentiary privileges, and applicable rules of the board.

These rules are intended to implement Iowa Code section 22.11.

[Filed 4/5/88, Notice 2/10/88—published 5/4/88, effective 7/1/88]

[Filed emergency 5/16/89—published 6/14/89, effective 5/17/89]

[Filed emergency 5/10/91—published 5/29/91, effective 5/10/91]

[Filed 3/22/95, Notice 11/9/94—published 4/12/95, effective 5/31/95]

[Filed 4/24/98, Notice 3/11/98—published 5/20/98, effective 6/24/98]

[Filed emergency 10/6/99—published 11/3/99, effective 10/11/99]